

B1 compartment located near an end of the third section, which end is distal of the second section, whereby packaging stored in the generally open package storage compartment are easily accessed.

B2 7. (Amended) The food preparation line of Claim 1 [additionally comprising], wherein the heating device comprises a hot ingredient well [positioned near the intersection of the first and second sections, the hot ingredient well being] positioned at a working level of the line.

B3 10. (Amended) The food preparation line of Claim 1, wherein the cooled storage compartment comprises an open produce bin [positioned on the second section].

B4 17. (Amended) The food preparation line of Claim 1, wherein said heated storage compartment comprises a steam cabinet [that is arranged on the first section], said steam cabinet comprising a housing having a substantially vertical opening and at least partially defining a steam chamber, the opening extending into the steam chamber and providing substantially unfettered access into the steam chamber.

B5 22. (Twice Amended) The food preparation line of Claim 1 additionally comprising a food ingredient dispenser positioned at the first inside corner [near the intersection of the first and second sections].

B6 25. (Amended) The food preparation line of Claim 22, wherein said ingredient dispenser includes at least one a delivery nozzle located on one side of the dispenser and at least one access opening located on [the other] another side of the dispenser.

B 44. (Amended) A food preparation line comprising three sections being positioned to form a generally U-shape counter, the first section and part of the second section forming a first portion and part of the second section and the third section forming a second portion [a first portion and a second portion], the first portion abutting the second portion, the first portion including a warmer and a heating device, the warmer and the heating device positioned within generally about six feet of each other so as to be within an arm span of a worker, the second portion including an accompaniments container proximate the heating device and a packaging dispenser, the accompaniments container and the packaging dispenser positioned within generally about six feet of each other so as to be within an arm span of a worker.

Please add the following new claim:

64. A food preparation line comprising a first section, a second section lying generally normal to the first section, and a third section positioned next to and extending away from the second section, a heated storage compartment positioned on one of the sections, a cooled storage compartment positioned on another one of the sections, a generally open package storage compartment located near an end of the third section, which end is distal of the second section, whereby packaging stored in the generally open package storage compartment are easily accessed, the cooled storage compartment comprising an open produce bin positioned on the second section, a taco rail being positioned on the second section and extending along at least a portion of a length of the produce bin and a waste receptacle being located beneath the taco rail.

COMMENTS

Applicant would initially like to thank Examiner Bartuska for the courteous interview extended to Applicant's counsel, Robert J. Roby and Bill Shreve, on March 6, 2000. Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. Claims 1, 7, 10, 17, 22, 25 and 44 have been amended and Claims 4, 5, 8, 9, 13-15, 19-21, 27-30, 48, 49, 52, 53 and 54 have been cancelled without prejudice or disclaimer. As a result of the amendments, Claims 1-3, 6, 7, 10-12, 17, 18, 22-26, 31, 44-47, 50, 51, and 55-63 remain pending.

The Cancelled Claims

As indicated above, a number of claims have been cancelled through this amendment. The cancelled claims are all dependent claims that have been cancelled to better focus the claim sets and to ease examination of the present application. Applicant hereby reserves the right to pursue claims as broad as, or broader than, the cancelled claims in later filed priority-based applications. Specifically, Applicant is not implicitly or explicitly acquiescing to any rejections by canceling these claims.

Claims 1-4, 7, 10, 17 and 18 Are Not Anticipated By Tuhro et al.

Claims 1-4, 7, 10, 17 and 18 have been rejected as anticipated by Tuhro et al. While Applicant respectfully disagrees with the characterization of the Tuhro et al. reference and the basis

for the rejection, Applicant nonetheless has amended Claims 1, 7, 10, 17, 22 and 25 to advance the prosecution of the present application. As with the cancelled claims, Applicant hereby reserves the right to pursue broader claims than the amended claims in later filed priority based applications.

Tuhro et al. disclosed modular counter units for food preparation in commercial kitchens and the service of prepared foods in cafeteria and buffet lines. Col. 1, lines 5-9. The disclosure of Tuhro et al. stated that one feature of the invention was the almost total flexibility in the selection, placement and movability of the various base-defining units of the lower level LL relative to the upper level counters UL. Col. 4, lines 13-17. The disclosed embodiment was a cafeteria line in which the modularity of the claimed invention was used. Col. 2, line 44-45. The cafeteria line CL of Figure 1 featured a two-tier system: an upper food holding level and a lower support and storage level. Col. 3, line 61-64. Along the upper food holding level, the cafeteria line included a starter station 20 at the beginning of a first section, which station accommodated trays, dishes, napkins and tableware service. Col. 3, lines 65-67. The cafeteria line also featured a hot food or steam table unit 22 along the first section. Col. 4, lines 1-2. A second section of the cafeteria line included a cold pan or frost top unit 24 for iced or refrigerated foods (and beverages). Col. 4, lines 3-4. A third section of the cafeteria line included a selector case 25 for refrigerated foods and a cashier or check out station 27. Col. 4, lines 6-8. The cafeteria line included a continuous tray slide 36 that was mounted on the outer or customer side. Col. 4, lines 17-19.

Claim 1, as amended, now recites, among other limitations, a food preparation line comprising a first section, a second section lying generally normal to the first section, and a third section positioned next to and extending away from the second section at an angle and in the same general direction as the first section, a first inside corner being defined at a juncture between the first section and the second section, a heated storage compartment positioned on the first section, a heating device being positioned on the first inside corner and a generally open package storage compartment located near an end of the third section, which end is distal of the second section, whereby packaging stored in the generally open package storage compartment are easily accessed.

If Tuhro et al. failed to disclose any one of these limitations, Claim 1 is not anticipated. Tuhro et al. failed to disclose more than one of these limitations and, therefore, the subject matter

recited by Claim 1 cannot be anticipated by Tuhro et al. For instance, the claim recites a heated storage compartment that is positioned on the first section and a generally open package storage compartment that is located near an end of the third section. The corresponding components in Tuhro et al., as identified in the Office Action, namely component 71 and 22, are both positioned along the same section rather than on two distinct sections. Moreover, component 71 is not an open packaging storage compartment, rather, component 71 is a multi-compartment bin for organizing tableware, i.e., knives, forks and spoons. Col. 8, lines 23-28. Tuhro et al. also failed to disclose a heating device positioned on an inside corner. In fact, Tuhro et al. has blank corner units 23, 23a that were used to turn the direction of the cafeteria line CL when necessary or desirable due to room size, traffic flow, service requirements or the like. Col. 9, lines 37-41. Accordingly, because at least these limitations were not disclosed, Tuhro et al. did not anticipate Claim 1.

Claims 2-4, 7, 10, 17 and 18 ultimately depend from Claim 1 and, therefore, are not anticipated for at least the same reasons as discussed above. Moreover, at least some of these claims recite additional limitations that were not disclosed by Tuhro et al. For instance, Claim 3 recites that the heated storage compartment has an access opening on two sides. The heated storage compartment cited in the Office Action, i.e., the hot food or steam table unit 22, features a sneeze guard on the customer side of the cafeteria line and, therefore, does not have an access opening on the two sides as recited by Claim 3. Moreover, Claim 17 recites, among other limitations, that the heated storage compartment comprises a steam cabinet that is arranged on the first section and that the steam cabinet comprises a housing having a substantially vertical opening and at least partially defining a steam chamber. The opening extends into the steam chamber to provide substantially unfettered access into the steam chamber. Such a construction was not disclosed by Tuhro et al. Further, Claim 18 recites a wrap storage station that is located below the steam cabinet. Again, such a construction was not disclosed by Tuhro et al. Accordingly, for at least these reasons, Claims 2-4, 7, 10, 17 and 18 were not anticipated by Tuhro et al.

Claims 6 Is Not *Prima Facie* Obvious

Claim 6 ultimately depends from Claim 1. This claim has been rejected over Tuhro et al. in combination with Searcy. Applicant respectfully disagrees. A *prima facie* case of obviousness

requires three components. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

As explained above, various limitations were not disclosed by Tuhro et al. At least these same limitations also were not taught or suggested by Tuhro et al. For instance, Searcy failed to disclose, teach or otherwise suggest, among other limitations, a heated storage compartment that is positioned on the first section and a generally open package storage compartment is located near an end of the third section. Accordingly, because Searcy did not supply the requisite teaching or suggestion of the limitations not taught or suggested by Tuhro et al., a *prima facie* case of obviousness has not been made. See M.P.E.P. § 2143 (stating that a *prima facie* case of obviousness requires a teaching or suggestion of every limitation).

Moreover, at the time of the invention, there was no motivation to combine the U-shaped service counter with teachings of Tuhro et al. to arrive at a U-shaped food preparation line as claimed. When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references. See In re Geiger, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987).

Tuhro et al. disclosed a cafeteria line in which a customer would pick up a tray and a plate at one end and then would progress in an orderly fashion along the entire cafeteria line to receive portions of various separately-complete food items. The food items were replenished from the serving side of the cafeteria line while customers passed along the receiving side of the cafeteria line, which receiving side was on the opposite side of the cafeteria line from the serving side. Thus, the construction of Tuhro et al. advantageously maintained a barrier between the customers and the workers that are restocking the cafeteria line.

To the contrary, the disclosure of Searcy is specifically directed to a store construction that provides customers with access to a center service portion from substantially all sides. Col. 7, lines 17-21. Thus, the customers would pick a specific point of the center service portion, which point was typically the closest point to the particular customer, and proceed directly to that point from wherever the customer was in the store. The disclosed service portion featured a display structure and service counter. Shopping aisles were located on substantially all sides of the central portion to provide access to the central portion from substantially all points in the store. The central portion was configured to allow the patron to go directly to the U-shaped member for service or check-out. Col. 7, lines 17-21. Accordingly, there is not a steady flow of customers in Searcy from one end of the center service portion to the other as in the cafeteria line of Tuhro et al.

Moreover, the important traffic flow patterns of Tuhro et al. (Col. 9, lines 37-41) and Searcy (Col. 2, line 67 – Col. 3, line 2) conflict due to the differences in the underlying goals of the disclosed arrangements. For instance, if the cafeteria line of Tuhro et al. were formed in a U-shape, such as the counter space taught by Searcy, the workers restocking the cafeteria line taught by Tuhro et al. would have to pass through the line of customers waiting for service while carrying hot or cold food items. In addition, the disclosed U-shape results in a tight and enclosed work environment for both servers and stock people because food supplies would be replenished and food items would be served from the same side of the food line. Such a tight and enclosed work environment was not a concern in the store taught by Searcy; however, such an environment would be contrary to a high-volume cafeteria line. Thus, such a construction generally would counsel against making the combination for a food preparation line that would be used in a high-volume quick-service restaurant environment. In short, the combination of the teachings of Tuhro et al. and the teachings of Searcy would appear to have been undesirable to those in the cafeteria line industry. Thus, because there was no motivation to combine the teachings of the two references at the time of the invention, no *prima facie* case of obviousness has been established. Accordingly, Applicant respectfully requests reconsideration of Claim 6.

Claims 11 Is Not *Prima Facie* Obvious

Claim 11 has been rejected as unpatentable over Tuhro et al. in view of Baze. Again, Applicant submits that a *prima facie* case of obviousness has not been established. As a preliminary matter, Baze is not a taco rail as defined and used in the written description of the present application. Nevertheless, even if Baze could be construed as a taco rail, Baze simply did not provide a teaching or suggestion of the same limitations discussed above, which also were not taught or suggested by Tuhro et al. In addition, Claim 11 recites a specific location of the taco rail. Baze simply taught a structure for forming tortillas into taco shells.

The Federal Circuit has stated, "virtually all [inventions] are combinations of old elements. Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be an illogical and inappropriate process by which to determine patentability." In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998).

In the present application, the Examiner has failed to identify a teaching or suggestion to position the taco rail along a portion of a second section of a food preparation line. Rather, the Examiner only states that "it would have been obvious to one of ordinary skill in the art in view of the taco rail of Baze to provide the device of Tuhro et al. with a taco rail to permit the preparation of tacos." This bare bones statement fails to identify a teaching or suggestion in the prior art as a whole that would have led one of ordinary skill in the art to position a taco rail along the second section of the recited food preparation line. Even if one were motivated to position a taco utensil such as that taught by Baze along the cafeteria line taught by Tuhro et al., the taco utensil would not necessarily be positioned along the second section of the disclosed cafeteria line, which contained the cold food compartment. Rather, due to the nature of cafeteria lines and the nature of the taco utensil, the taco utensil would likely be positioned proximate a hot food section near a beef or bean supply. The references simply do not support the rejection.

Accordingly, without more, a *prima facie* case of obviousness has not been established with respect to Claim 11 and Applicant respectfully requests reconsideration.

Claims 22-26 Are Not *Prima Facie* Obvious

Claims 22-26 stand rejected as unpatentable over Tuhro et al. in view of Conlan et al. Applicant respectfully disagrees because, among other reasons, neither Tuhro et al. nor Conlan et al. taught or suggested, among other limitations, a heated storage compartment that is positioned on the first section and a generally open package storage compartment that is located near an end of the third section.

Conlan et al., which was relied upon solely for a teaching of ingredient dispensers, was a manual food service system that precluded a food server from touching dirty currency or other items that would contaminate the food. Thus, the server would be able wash their hands less frequently. Conlan, however, did not teach a first section having a heated storage compartment and a third section (which is spaced from the first section by a second section) having a generally open package storage compartment located near one of its ends. For at least this reason, a *prima facie* case of obviousness of Claim 22 has not been established.

Claims 23-26 each ultimately depend from Claim 22 and are not *prima facie* obvious for at least the same reasons. In addition, at least some of the claims recite further limitations not taught or suggested by the applied references. For instance, as used throughout the detailed description and the drawings, Applicant does not consider a drink dispenser to be a food ingredient dispenser. Thus, the further details related to the food ingredient dispenser recited by Claims 23-26 clearly were not taught or suggest by any of the applied references. For at least these reasons, Claims 23-26 are not *prima facie* obvious and reconsideration is respectfully requested.

Claims 44-47 Are Not *Prima Facie* Obvious

Claims 44-47 stand rejected as unpatentable over Tuhro et al. in view of Boyd et al. Applicant respectfully disagrees. Because neither Tuhro et al. or Boyd et al. taught or suggested, among other limitations, a food preparation line comprising three sections that are positioned to form a generally U-shape counter, wherein the first section and part of the second section form a

first portion and part of the second section and the third section form a second portion. In addition, neither reference taught or suggested the first portion including a warmer and a heating device, the warmer and the heating device being positioned within generally about six feet of each other so as to be within an arm span of a worker, and the second portion including an accompaniments container proximate the heating device and a packaging dispenser, the accompaniments container and the packaging dispenser being positioned within generally about six feet of each other so as to be within an arm span of a worker.

Tuhro et. al., which was extensively discussed above, clearly did not teach or suggest the recited positioning of elements. Moreover, Boyd et al. disclosed a coffee cart. A straight coffee cart clearly could not have provided a teaching or suggestion of a generally U-shaped counter having the particular configuration recited. Moreover, Boyd et al. simply did not teach or suggest a first portion of a U-shaped counter and a second portion of a U-shaped counter that both contained the specific recited components within generally about six feet of each other.

It appears that the Examiner is relying upon the broad-based statement in Tuhro et al. that modular components provide positioning flexibility as the sole teaching or suggestion of the recited positioning-related limitations; however, this statement did not provide any motivation or suggestion to arrange and position the sections in the recited U-shape or to position the recited components in the recited locations. Without some identification of a teaching or suggestion to combine references actually having a teaching or suggestion of the recited positioning of the recited components, a *prima facie* case of obviousness of Claim 44 has not been established.

Claims 45-47 each ultimately depend from Claim 44 and are not *prima facie* obvious for at least the same reasons. In addition, at least some of the claims recite further limitations not taught or suggested by the applied references. For instance, neither reference disclosed, taught or suggested a steam cabinet. As used throughout the detailed description and the drawings, Applicant does not consider an espresso maker to be a steam cabinet. For at least these reasons, Claims 45-47 are not *prima facie* obvious and reconsideration is respectfully requested.

Claims 55-59 and 61 Are Not *Prima Facie* Obvious

Claims 55-59 and 61 have been rejected as unpatentable over Tuhro et al. in view of Boyd et al. and further in view of Searcy. Applicant respectfully disagrees.

As a preliminary matter, the applied combination failed to teach or suggest at least one limitation recited by Claim 55. For instance, none of the applied references taught or disclosed, among other limitations, a food product assembly area comprising a first station and a second station, wherein the first station is generally located at a juncture between a first counter section and a second counter section and the second station is generally located at a juncture between the second counter section and a third counter section when the first counter section, the second counter section and the third counter section are arranged in a generally U-shaped configuration. Moreover, nothing in any of the applied references suggested spacing the recited components within arms reach of the specified station and spacing the two stations so as to enable a first worker positioned at the first station to directly pass the food product to a second worker positioned at the second station.

The rejection simply states that “all the features of applicant’s claimed invention except the sections arranged in a U-shape” are shown in Tuhro et al. as modified by Boyd et al. As discussed above, at least some of the same recited features were not disclosed or suggested by both of the references; however, assuming *arguendo* that all of the recited elements were somehow taught or suggested by the two references, there still was no teaching or suggestion to position the components in the recited manners. Thus, the elements relating to the relative locations of the respective features were not taught or suggested.

The rejection continues that “it would have been obvious to one of ordinary skill in the art in view of the U-shaped arrangement of the food preparation area 14 of Searcy to arrange the food preparation area of Tuhro et al. in the more space efficient U shape.” As discussed above, there was no motivation at the time of the invention to combine the two applied references (i.e., Tuhro et al. and Searcy) in the recited manner. When considered as a whole, there simply is a lack of motivation to combine the applied references in the manner described in the Office Action. For this

reason, as well as the lack of a teaching or suggestion of some of the elements, among other reasons, Claim 55 is not *prima facie* obvious over the applied combination.

Claims 56-59 depend from Claim 55 and are not *prima facie* obvious for at least the same reasons. In addition, certain of the claims recite further limitations that were not taught or suggested by the combination. For instance, neither reference taught or suggested a steam cabinet such as that recited by Claim 56. Accordingly, the combination could not have taught such an element. In addition, Claim 57 recites a particular location of a heated shelf along the food preparation line relative to a station. Such a limitation was not taught or suggested by the references, either alone or in combination. For at least these reasons, Claims 56-59 are not *prima facie* obvious.

Claims 60, 62 and 63 Are Not *Prima Facie* Obvious

Claims 60, 62 and 63 have been rejected as unpatentable over Tuhro et al. in view of Searcy and Boyd et al. and further in view of Conlan et al. Applicant respectfully disagrees. As discussed above, the combination of Tuhro et al. in view of Boyd et al. and further in view of Searcy failed to teach or suggest at least one limitation of independent Claim 55, from which these claims depend. In addition, there would have been no motivation to combine Tuhro et al. with Searcy to arrive at the claimed invention. In fact, it appears from a close reading of the references, the two references as a whole teach away from combining the references.

In addition, at least Claims 60 and 63 recite certain components in specific locations. The specific locations were not taught or suggested by any of the applied references. Moreover, one of ordinary skill in the art would not have been led to position the components as recited from a review of the references, together or separately. Accordingly, Claims 60, 61 and 63 are not *prima facie* obvious and reconsideration is respectfully requested.

New Claim 64

The Examiner previously indicated that Claim 12 contained allowable subject matter. Accordingly, Applicant has rewritten Claim 12 into independent form, including all of the limitations of the base claim and any intervening claims. The new claim includes the limitations of

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the base claim and the intervening claims as they existed prior to the filing of this amendment. Thus, new Claim 64 differs in scope from Claim 12, which also remains pending.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Respectfully submitted,

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